NETWORK ARCHITECTURE

Point of Interconnection

ISSUE I.1 This issue is shared by AT&T, Cox and WorldCom.

Should each Party be financially responsible for all of the costs associated with its originating traffic that terminates on the other Parties' network, regardless of the location and/or number of points of interconnection, as long as there is at least one Point of Interconnection per LATA?

SUB-ISSUE I.1.A.

Can Verizon force AT&T to establish a Point of Interconnection at a particular end office, when AT&T traffic to that end office reaches a certain threshold traffic level?

Witness: Dave Talbott
Attorney: IV Mellups/Ellen Schmidt

General Principles:

- *A CLEC has the right to designate any technically feasible point of interconnection, including a single point of interconnection per LATA.*
- *An ILEC cannot compel a CLEC to establish multiple interconnection points, although a CLEC is free to voluntarily agree to multiple points.*
- *A LEC cannot assess charges on another LEC for traffic that originates on the LEC's network.*
- *A LEC is financially responsible to provide transport for its originating traffic to the other LEC's terminating switch serving the end user.*

AT&T's Position:

AT&T may interconnect at any technically feasible point on Verizon's network, including a single Point of Interconnection ("POI") in the LATA, at its discretion. Verizon may interconnection to the AT&T network at each AT&T switch, or other

mutually agreed to point. Each Party must be financially responsible to deliver their originating traffic for termination to those selected points, regardless of the location and number of POIs, provided there is at least one POI per LATA. Moreover, each Party has the obligation to compensate the terminating Party for the transport and termination of its originating traffic from the POI to the designated end user via reciprocal compensation rates. AT&T's position on this matter is supported by the law; is equitable to both parties; and, is consistent with the Commission's policy to encourage competition in the provision of local exchange services.

Proposed Remedy:

Section 4.0 *et. seq.* of the attached proposed contract sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Verizon's Position:

Verizon's proposal designates the POIs for both Parties. Specifically, Verizon proposes that in most circumstances AT&T must establish POIs at each Verizon end office. If AT&T does not establish a POI at every end office, then Verizon proposes that AT&T pay for the additional transport costs that Verizon incurs to deliver its originating traffic to AT&T's POI. Verizon's POIs, however, are either at its tandems, or in some cases at its originating switch. In addition, Verizon does not propose to pay AT&T for taking Verizon's originating traffic to AT&T's switches for termination.

Relevant Authorities:

Act, §§251(b), 251(c)(2).

47 C.F.R. §§ 51.701(b)(1), 51.701(c), 51.703(b), 51.709(b), 701(d).

First Report and Order, *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 172, 176, 220, 1062 (*"Local Competition Order"*).

Memorandum Report and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket. No. 00-65, ¶ 78 (rel. June 30, 2000) (*"Texas 271 Order"*).

In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, released January 22, 2001 (*"Oklahoma/Kansas 271 Order"*) at ¶¶ 233-235.

Memorandum of the Federal Communications Commission as Amicus Curiae, at 20-21, *US West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.*(D. Or. 1998) (No. CV 97-1575-JE).

US West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al, No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998).

US West Communications, Inc., v. Minnesota Public Utilities Commission, et al., No. Civ. 97-913 ADM/AJB, slip op. at 33-34 (D. Minn. 1999).

US West Communication, Inc., v. Arizona Corporation Commission, 46 F. Supp. 2d 1004, 1021 (D. Ariz. 1999).

U S West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., et al., 31 F. Supp. 2d 839, 852 (D. Or. 1998).

U S West Communications, Inc. v. MFS Intelenet, Inc., No. C97-222 WD, 1998 WL 350588, *3 (W.D. Wa. 1998), *aff'd U S West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999).

U.S. West Communications, Inc. v. Robert J. Hix, et al., No. C97-D-152, _ F. Supp. _ (D. Colo., June 23, 2000) .

In re TSR Wireless, LLC, et. al., v. U.S. West , File Nos. E-98-13, et. al., FCC 00-194 (June 21, 2000) (Appeal filed *sub nom, Qwest Corp. v. FCC*), Docket No. 00-1376 (D.C. Cir. Aug. 17, 2000).

Order, *Level 3 Communications, LLC, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Bell South Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Dkt. 000907-TP, Order No. PSC-01-0806-FOF-TP (March 27, 2001) at 2-12; 17-25.

Decision of ALJ, *AT&T Communications of SouthWest Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with SouthWestern Bell Telephone Company, Pursuant to Section 252(b) of the Telecommunications Act of 1996,* (Feb 8, 2001) (The Oklahoma Commission affirmed this portion of the ALJ award by Order at 8 dated March 14, 2001).

Revised Order, *AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Southwestern Bell Pursuant to Section 252(b) of the Telecommunications Act of 1996*, PUC Docket No. 22315 at 2-7 (March 14, 2001).

Order, *AT&T Communications of the Southern States, Inc. Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*,Dkt. No. P-140, SUB 73, Dkt. No. P-646, SUB 7 at 7-15 (March 9, 2001).

Reconsideration Order, *AT&T Communications of the Southern States, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Dkt No. 2000-527-C, Order No. 2001-147 at 14-24 (Feb. 15, 2001).

Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 (Oct. 18, 2000)(The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000).

Order, *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40571-INT-03 at 19-21 and 27-28 (Nov. 20, 2000).

Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between two AT&T subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, O5-MA-120 (Oct. 12, 2000).

Arbitrator's Order No. 5: Decision, *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996*, pp. 4, 10 (Aug. 7, 2000). *See* Order Addressing and Affirming Arbitrator's Decision at 9.

Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Dkt. No. 00-01-022, at 13 (CA PUC Aug. 3, 2000).

Reconsideration Order, *MediaOne Telecommunications of Massachusetts, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with New England Telephone and Telegraph Company d/b/a/ Bell Atlantic-Massachusetts,* D.T.E. 99-42/43, 99-52 at 4-12 (March 24, 2000).

Order, *Investigation by the Department on its own Motion as to the Propriety of the rates and charges set forth in MDTE Nos. 14 and 17 by New England Telephone and Telegraph Company d/b/a/ Bell Atlantic- Massachusetts,* D.T.E. 98-57, at 129-133 (March 24, 2000).

Arbitration Panel Report, *AT&T Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Case No. 00-1188-TP-ARB at 8, 15, 83 (March 19, 2001).

Explanation of AT&T's Position, Including Discussion of Relevant Authority:

AT&T has the legal right to select the locations where it delivers its traffic to Verizon and where Verizon delivers its traffic to AT&T. Moreover, each Party is financially responsible to deliver its own traffic to the designated end user. Thus, AT&T proposes that it will select a minimum of one POI per LATA, yet be financially responsible for the transport and termination costs incurred by Verizon associated with delivering AT&T's traffic to the designated Verizon end users. In turn, Verizon will be financially responsible for delivering its traffic to AT&T's end users.

Verizon's proposal, on the other hand, permits Verizon to dictate the locations where both parties deliver their traffic for termination, and also shifts to AT&T a

substantial proportion (and in certain cases all) of its transport costs incurred to deliver its traffic to AT&T's switches. Such a proposal is contrary to the Act, FCC orders and regulations.

In order to adequately address the issues relating to the point for traffic exchange, and the rights and obligations relating to the delivery and termination of traffic, it is necessary to clarify certain definitions relating to both interconnection and reciprocal compensation. If these definitions are not appropriately defined, the rights and obligations associated with interconnection cannot be properly understood.

CLECs Have the Right to Select the POI.

First, the basic terms "interconnection" and "point of interconnection" ("POI") should be clarified. Interconnection is the physical linking of two networks for the mutual exchange of traffic.[15] Thus, the POI is a *location* where the parties mutually exchange their traffic.[16] The incumbent's interconnection obligation is set forth in Section 251(c)(2) of the Telecommunications Act of 1996 ("Act"), which provides that it is the duty of every incumbent local exchange carrier:

> "to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network... at any technically feasible point within the carriers network...on rates terms and conditions that are just, reasonable and non-discriminatory."

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15 First Report and Order, *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 172, 176 (*"Local Competition Order"*).

16 A Party can bring its traffic to the POI for interconnection in a variety of ways. It can self provision trunks, lease interconnection facilities from third parties, or even lease interconnection facilities from the ILEC. If facilities are leased from the ILEC to deliver traffic to the designated POI, those leased facilities are considered part of the CLEC's network; rather than the ILEC's network, with the POI being the location designated by the CLEC where the trunks are terminated for reciprocal compensation purposes.

Therefore, the CLEC has the right to choose the POI on the ILEC's network at any technically feasible point.

The FCC's references in paragraphs 172 and 176 of the *Local Competition Order,* to the terms "exchange" and "mutual exchange" of traffic suggest that an interconnection point is used to exchange both parties' traffic. For those CLECs that use two-way trunks, a single POI for traffic exchange of both parties' traffic is an efficient means of interconnection. However, when a CLEC, like AT&T, prefers to use one-way trunks, it is not necessarily efficient for both parties to have the POI in the same location.[17] In recognition of this fact, AT&T has proposed that the parties can mutually agree to a separate location for the delivery of Verizon's traffic. Absent mutual agreement, however, AT&T proposes that Verizon deliver its traffic to AT&T's switch serving the designated end user.[18] This proposal gives Verizon more flexibility than it is otherwise provided by the law because it gives Verizon the option to select the more economical

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17 AT&T and Verizon have agreed that local interconnection traffic will be exchanged using one-way trunks.

18 If Verizon objects to delivering its traffic to AT&T's switch as a default point, and if the Commission does not require it to do so, then Verizon must be bound to deliver its traffic to the POI chosen by AT&T for the delivery of AT&T's traffic, and pay AT&T TELRIC-based transport rates associated with delivering Verizon's traffic to AT&T's switch serving the designated end user. This solution, however, is only reasonable if the rates charged by Verizon for any interconnection facilities leased to AT&T for delivery of its traffic to Verizon, are UNE/TELRIC rates rather than access rates as proposed by Verizon. If AT&T were required to compensate Verizon for any leased interconnection facilities using access rates, but Verizon only had to pay AT&T TELRIC-based transport rates to deliver its traffic to AT&T's switch, then AT&T would be subsidizing the costs of transporting Verizon's originating traffic to AT&T's terminating switch. Verizon's position is even more unreasonable and in contravention to the Act, however, because Verizon refuses to pay the full cost of delivering its traffic to the POI when it leases entrance facilities from AT&T. Specifically, Verizon proposes that AT&T limit its applicable transport charges to no more than a non-distance sensitive entrance facility charge. Again, Verizon is attempting to pass off its costs of terminating its own traffic to AT&T. AT&T understands that Verizon has taken this position with Cox as well.

method to deliver its traffic to AT&T's terminating switch – by either paying AT&T or a third party additional transport costs to get the traffic to the terminating switch, or taking the call to the terminating switch over its own facilities and thus avoid paying the additional transport costs.

A CLEC's right to designate the POI locations for traffic exchange is also reinforced by the absence of any discussion in the Act or FCC rules or orders giving the ILEC the authority to choose a point at which it delivers its traffic to the CLEC. The fact is, there is no specific grant of authority to the incumbent that enables it to designate a location where it will deliver its traffic to the CLEC. Moreover, there is no obligation set forth in the Act that requires a CLEC to interconnect with the ILEC at the ILEC's chosen location[19]. In fact, in the *Local Competition Order*, the FCC considered and specifically rejected such a proposal proffered by Bell Atlantic in which it claimed that reciprocal interconnection obligations should be imposed on both ILECs *and* competitors.[20]

The FCC has consistently confirmed the CLEC's right to choose the location of the POI. For example, in its *Local Competition Order*, the FCC stated that § 251(c)(2) "allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."[21] Recent Orders continue to support AT&T's position on its right to select a POI(s). For example, in its recent order

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19 Section 251(b) of the Act only states that telecommunications carriers have a duty to interconnect directly or indirectly with facilities and equipment of other telecommunications carriers.

20 *Local Competition Order* at ¶ 220. (emphasis added).

21 *Id.* at ¶ 172.

approving SWBT's application for interLATA authority in Texas, this Commission made it clear that Section 251(c)(2) gives CLECs the option to interconnect at as few as one technically feasible point within each LATA.[22] The FCC made a similar pronouncement in its recent Order granting in-region interLATA authority to SWBT for Kansas and Oklahoma.[23]

Indeed, the FCC found the right of a competing carrier to choose the POI, (and conversely the unlawfulness of any attempts by incumbents to dictate points of interconnection) sufficiently clear and compelling to intervene in court reviews of interconnection disputes. For example, in an interconnection dispute in Oregon, the FCC intervened as *amicus curiae* and urged the court to reject US West's argument that the Act requires competing carriers to "interconnect in the same local exchange in which it intends to provide local service."[24] The FCC stated:

> Nothing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition.[25]

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22 Memorandum Report and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket. No. 00-65, ¶ 78 (rel. June 30, 2000) (*"Texas 271 Order"*).

23 *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, released January 22, 2001 (*"Oklahoma/Kansas 271 Order"*) at ¶¶ 233-235.

24 Memorandum of the Federal Communications Commission as Amicus Curiae, at 20-21, *US West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (D. Or. 1998) (No. CV 97-1575-JE).

25 *Id.* at 20.

Many federal district courts have agreed, and have rejected as inconsistent with § 251(c)(2) the efforts of incumbent LECs to require competing carriers to establish points of interconnection in each local calling area, because such a requirement imposes undue costs and burdens on new entrants.[26]

Given the absence in the Act of a specific grant of authority to the ILEC to select a POI, the absence of a specific obligation imposed on the CLEC to interconnect at a location specified by the ILEC, and the FCC's pronouncements in the *Local Competition Order* and other recent decisions relating to the singular right of the CLEC to designate the POI, it is clear that Verizon is obligated to deliver its traffic to the POI(s) chosen by the AT&T.

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26 *See, e.g., US West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al*, No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998), (US West's contention that the "Act requires a CLEC to have a POI in each local calling area in which that CLEC offers local service" is "wrong"); *US West Communications, Inc., v. Minnesota Public Utilities Commission, et al.*, No. Civ. 97-913 ADM/AJB, slip op. at 33-34 (D. Minn. 1999) (rejecting U S West's argument that section 251(c)(2) requires at least one point of interconnection in each local calling exchange served by US West."); *US West Communication, Inc., v. Arizona Corporation Commission*, 46 F. Supp. 2d 1004, 1021 (D. Ariz. 1999) ("The court also rejects U S West's contention that a CLEC is always required to establish a point of interconnection in each local exchange in which it intends to provide service. That could impose a substantial burden upon CLECs, particularly if they employ a different network architecture than U.S. West"); *U S West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., et al.*, 31 F. Supp. 2d 839, 852 (D. Or. 1998) ("Although the court agrees with US West that the Act does not define the minimum number of interconnection points, the court also rejects US West's contention that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service. That is not legally required, and the cost might well be prohibitive for prospective customers."); *see also U S West Communications, Inc. v. MFS Intelenet, Inc.*, No. C97-222 WD, 1998 WL 350588, *3 (W.D. Wa. 1998), *aff'd U S West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999). Most recently, the U.S. District Court for Colorado issued a similar ruling in *U.S. West Communications, Inc. v. Robert J. Hix, et al.*, No. C97-D-152, _ F. Supp. _ (D. Colo., June 23, 2000) ("Moreover, the Court holds that it is the CLEC's choice, subject to

Each Party is Financially Responsible for the Transport of its Originating Traffic to the Terminating End User.

AT&T proposes that each party should be financially responsible for the transport of its (originating) local and intraLATA toll traffic between the switch serving the originating end-user and the switch serving the terminating end-user. If AT&T routes its traffic via a Verizon tandem switch, then AT&T will compensate Verizon for the transport between the ILEC tandem and the terminating switch via reciprocal compensation. If Verizon routes its traffic via a POI remote from the AT&T switch, then Verizon will compensate AT&T for the transport between the Verizon POI and the terminating switch via reciprocal compensation. In addition, both Parties are responsible to pay the other carrier the termination costs associated with carrying the other party's traffic from the terminating switch to the designated end user. This proposal, as demonstrated below, is fully supported by the Act and FCC rules and regulations related to transport and termination.

The location of the POI defines the carrier's obligations with respect to traffic delivery and termination. As the FCC acknowledged in ¶ 172 of the *Local Competition Order*, the selection of the POI by the requesting carrier specifically affects the amount of transport and termination costs incurred by the carrier to complete its calls. This is because transport and termination costs are determined by the location of the POI. That is, after the originating carrier delivers traffic to the POI chosen by the CLEC, the terminating carrier has the responsibility to take that traffic from that point and deliver it to the end user. If the call is local, the originating carrier compensates the terminating

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technical feasibility, to determine the most efficient number of interconnection points, and the location of those points.").

carrier for that delivery pursuant to the reciprocal compensation obligations set forth in the Act.[27] The Act requires all LECs, pursuant to Section 251(b)(5), to establish reciprocal compensation for the transport and termination of telecommunications. The transport part of reciprocal compensation begins at the POI and ends at the terminating switch;[28] and the termination portion takes the traffic from the terminating switch serving the end user to the end users premises.[29] Thus, the CLEC, by selecting a particular POI location, can either reduce or increase the percentage of reciprocal compensation transport and termination costs to its total costs. However, no matter where the POI is located, both the CLEC and the ILEC, remain responsible for all costs related to the delivery of their originating traffic to the designated end users.

Other than the reciprocal compensation that compensates carriers for terminating local traffic, there are no other specified compensation mechanisms that authorize interconnected carriers to charge the other carrier for the costs associated with the transport of a local call. Quite to the contrary, in fact, there are specific prohibitions against establishing such charges. The FCC has made it clear that each party bears responsibility for the costs of transporting its originating traffic to the POI. In the *Local*

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27 47 C.F.R. 51.701(b)(1) defines local telecommunications traffic as traffic that originates and terminates in the local service territory approved by the Commission. If the call is not a local call, then access charges, rather than reciprocal compensation charges apply.

28 47 C.F.R. 51.701(c) states that transport is transmission and any necessary tandem switching of local telecommunications traffic subject to Section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than the incumbent LEC.

29 47 C.F.R. 701(d) states that termination is the switching of local telecommunications traffic at the terminating carriers end office switch or equivalent facility and delivery of such traffic to the called parties premise.

Competition Order at ¶ 1062, the FCC established the fundamental rule that each party bears responsibility for the costs of transporting its originating traffic. It stated that "[t]he inter-connecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the inter-connecting carrier."

This fundamental principle is confirmed in the reciprocal compensation regulations. 47 C.F.R. § 51.703(b) provides that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.709(b) also supports this principle. It states that "The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier *to send* traffic that will terminate on the providing carrier's network." This regulation makes the point that the receiving carrier may not charge the interconnecting carrier any costs associated with the proportion of trunk capacity necessary to deliver its traffic to the interconnecting carrier.

The basic principle inherent in these regulations relating to the originating carrier's transport obligations is also affirmed in FCC orders.[30] For example, this

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30 Some ILECs and State Commissions have interpreted a sentence in paragraph 199 of the *Local Competition Order* as providing an exception to the ILEC's financial obligation to deliver traffic to the POI. Reconsideration Order, *AT&T Communications of the Southern States, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Dkt No. 2000-527_C, Order No. 2001-147 at 23 (Feb. 15, 2001); Order, *AT&T Communications of the Southern States, Inc. Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*,Dkt. No. P-140, SUB 73, Dkt. No. P-646, SUB 7 at 9 (March 9, 2001); Revised Order, *AT&T Communications of Texas, L.P.,*

principle is directly addressed in the case of *In re TSR Wireless, LLC, et. al., v. U.S. West*, where several paging carriers alleged that US West and other ILECs had improperly imposed charges for facilities used to deliver LEC-originated traffic. The paging carriers based their complaint on 47 C.F.R. § 51.703(b) and sought an order from the FCC prohibiting the ILECs from charging for dedicated and shared transmission facilities used to deliver LEC-originated traffic. The FCC agreed with the paging carriers. It determined that "any LEC efforts to continue charging CMRS or other carriers for delivery of such [LEC-originated] traffic would be unjust and unreasonable."[31]. It

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TCG Dallas, and Teleport Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Southwestern Bell Pursuant to Section 252(b) of the Telecommunications Act of 1996, PUC Docket No. 22315 at 4 (March 14, 2001). The sentence at issue reads " Of course a requesting carrier that wishes a technically feasible but expensive interconnection would, pursuant to Section 252(d)(1) be required to bear the cost of that interconnection, including a reasonable profit." A footnote follows, which states: "See 47USC 252(d)(1); *see also infra,* Section VIII (concluding that requesting carriers must pay incumbent LECs the cost of interconnection or unbundling.") A review of this paragraph and other related sections in the *Local Competition Order* demonstrate that this sentence is unrelated to the ability of the ILEC to charge interconnecting carriers for the ILEC's transport costs associated with delivering its traffic to the POI. Rather the sentence, which is a part of a discussion of technically feasible interconnection, refers to the right of an ILEC to recover any significant expenses associated with the physical linking of two networks. For example, in this same section the FCC notes how Congress intended to obligate the incumbent LEC to accommodate the new entrant's interconnection requests by accepting novel use of and modification to its network equipment to accommodate the interconnector. It is this type of extra interconnection costs related specifically to the linking of two networks, which, if significant enough in amount, could be recovered by the ILEC according to the cited sentence in paragraph 199. Moreover, if the intention of the sentence was to suggest that the ILEC can recover transport costs associated with the delivery of traffic to the POI, the footnote at the end of the sentence would reference Section XI of the *Local Competition Order* in which the FCC discusses the obligation of Parties to bear the costs of transporting originating traffic to the POI. Instead the footnote at the end of the sentence references Section VII of the Order that relates only to the pricing of interconnection and UNEs. Clearly, the cited paragraph is not related to the issue at hand.

31 *Id.* at ¶ 29

concluded that FCC "rules prohibit [the ILECs] from charging for facilities used to deliver LEC-originated traffic [to Complainants.]"[32]

The FCC also recently addressed this issue in dicta in its order approving SouthWestern Bell's ("SWBT's") application for interLATA authority in Kansas and Oklahoma.[33] The issue discussed in the *Oklahoma/Kansas 271 Order* was whether SWBT could charge CLECs for transport costs associated with delivering its traffic to a POI if the POI was located outside the SWBT local calling area. Although the issue was one of future compliance, the FCC nonetheless cautioned SWBT from "taking what appears to be an expansive and out of context interpretation of findings we made in our SWBT Texas Order concerning its obligation to deliver traffic to a competitive LEC's point of interconnection."[34] In particular, the FCC confirmed that its decision allowing a CLEC to designate a single point of interconnection did not in any way "change an incumbent LECs reciprocal compensation obligations under our current rules"[35]

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32 *Id.* at ¶ 25. In the *TSR* case, the calls in question, originated, terminated and did not travel outside the MTA, which is essentially a wireless local calling area. This fact, however, does not alter the applicability of this case. The FCC's analysis in this case focused upon the points at which the calls in question originated and terminated, rather than upon the physical path over which the call traveled – an approach which is consistent with the definition of local calling area in 47 C.F.R. §51.701(b) and AT&T's position in this case.

33 *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, released January 22, 2001 ("*Oklahoma/Kansas 271 Order*") at ¶¶ 233-235.

34 *Id.* at ¶ 235.

35 The FCC specifically referenced the very same rules addressed above (47 C.F.R. §51.703(b), 47 C.F.R. §51.709(b) which "preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LECs network" Oklahoma/ Kansas 271 at ¶ 235.

Thus, FCC Orders, regulations, and the Act support AT&T's proposal. Each independently supports the CLEC's right to select the POI, and is consistent with the requirement that carriers be financially responsible for their originating traffic. Verizon's proposal, on the other hand, is devoid of such support because it is entirely inconsistent with both of these principles.

Specifically, Verizon's proposal eviscerates AT&T's right to choose the POI by creating two separate terms - a POI and an IP. A POI, Verizon claims, is the place where the carrier physically interconnects its network with the network of Verizon. An IP, on the other hand, Verizon asserts, is the point where a carrier hands over financial responsibility to another carrier."[36] This IP/POI distinction is a complete fiction, unsupported by any statute or FCC rules or regulations. A review of Verizon's proposal reveals that the "IP" is nothing more than the place where reciprocal compensation begins – or the POI. As noted above, according to 47 CFR 51.701(c), the POI, *not the IP*, is the place where transport associated with reciprocal compensation begins. Moreover, the FCC acknowledged that the CLECs choice of the POI, enables the CLEC to choose the most efficient points at which to exchange traffic, thereby reducing transport and termination costs. [37] The POI, as Verizon defines it, does not affect AT&T's transport and termination costs in any way, and therefore its definition cannot be correct. Verizon creates this artificial distinction between POI and IP to enable it to select the location at

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36 Although Verizon often describes the IP as the point where financial responsibility changes hands, it is more accurate to say that its proposal is that the IP is the place where the responsibility for carrying the traffic is handed off, and where reciprocal compensation begins.

37 *Local Competition Order* at ¶172.

which it must deliver its traffic, as well as the location at which AT&T must deliver its traffic.

Verizon proposes that, in most circumstances, AT&T must deliver its traffic all the way to Verizon's end office. This proposal takes away AT&T's right to designate the POI. Verizon also proposes that in certain cases it deliver its traffic only as far as the Verizon tandems. In many other circumstances Verizon proposes to deliver its traffic only as far as the Verizon originating switch. Moreover, it does not propose to pay AT&T for taking the Verizon originating traffic to AT&T's switches for termination. Finally, if AT&T doesn't establish a POI at every end office, then Verizon proposes that AT&T pay for the additional transport costs that Verizon is incurring to deliver its originating traffic to AT&T's POIs. Thus, not only does Verizon's proposal takes away AT&T's right to choose its POI, but by requiring that AT&T pay a proportion of Verizon's transport costs when AT&T does not establish POIs at each end office; and by limiting Verizon's obligation to deliver its traffic to the Verizon tandem, and by limiting the price it would pay to AT&T for transport to the POI, the proposal forces AT&T to bear a disproportionate share of the costs of carrying the traffic between carriers.[38]

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38 Other State Commissions specifically have rejected the proposals similar to Verizon's that require CLEC's to pay the costs to receive traffic within each local calling area established by the ILEC. For example, the Kansas Commission found that TCG should be permitted to establish an interconnection point at SWBT's local and access tandems while SWBT should establish its interconnection point at TCG's switch. Arbitrator's Order No. 5: Decision, *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996*, pp. 4, 10 (Aug. 7, 2000). The Kansas Corporation Commission affirmed the arbitrator's decision on this issue on September 8, 2000, making a clarification as to the cost to be imposed to convert trunks. *See* Order Addressing and Affirming Arbitrator's Decision at 9. Similarly, the California Commission found that AT&T was not required to interconnect at each Pacific Bell end office and set default points of interconnection at AT&T's switch

Verizon's proposal is not only inconsistent with the law as discussed above, but it would inhibit the development of competition. Verizon's plan requires AT&T to build its network to match Verizon's entrenched network, or at least to incur costs *as if* it were

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and Pacific Bell's tandem switch. Opinion, *Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Dkt. No. 00-01-022, p. 13 (CA PUC Aug. 3, 2000). Arbitrators and Commissions in Michigan, Indiana, and Wisconsin, Oklahoma and Massachusetts also have held that each party is financially responsible for delivering its originating interconnection traffic to the terminating party's point of interconnection. Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between two AT&T subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, O5-MA-120 (Oct. 12, 2000); Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 (Oct. 18, 2000)(The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000); Order, *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40571-INT-03 (Nov. 20, 2000) at 19-21 and 27-28; Reconsideration Order, *MediaOne Telecommunications of Massachusetts, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with New England Telephone and Telegraph Company d/b/a/ Bell Atlantic- Massachusetts,* D.T.E. 99-42/43, 99-52 at 4-12 (March 24, 2000); Order, *Investigation by the Department on its own Motion as to the Propriety of the rates and charges set forth in MDTE Nos. 14 and 17 by New England Telephone and Telegraph Company d/b/a/ Bell Atlantic- Massachusetts,* D.T.E. 98-57, at 129-133 (March 24, 2000); Decision of ALJ, *AT&T Communications of SouthWest Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with SouthWestern Bell Telephone Company, Pursuant to Section 252(b) of the Telecommunications Act of 1996,(Feb 8, 2001)* (The Oklahoma Commission affirmed this portion of the ALJ award by Order at 8 dated March 14, 2001). *But see,* Reconsideration Order, *AT&T Communications of the Southern States, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Dkt No. 2000-527_C, Order No. 2001-147 at 14-24 (Feb. 15, 2001); Order, *AT&T Communications of the Southern States, Inc. Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*,Dkt. No. P-140, SUB 73, Dkt. No. P-646, SUB 7 at 7-15 (March 9, 2001); Revised Order, *AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Southwestern Bell Pursuant to Section 252(b) of the Telecommunications Act of 1996*, PUC Docket No. 22315 at 2-7 (March 14, 2001).

replicating the Verizon architecture. This is not only inefficient, but arbitrary as well. Verizon's network may have been efficient when it was built in a monopoly era, but given the advances in technology and the diminishing costs of transport, (as well as changes in regulatory policy to promote competition), it would not make sense for AT&T to attempt to duplicate such a network today. The Act recognizes that duplication of inefficient networks should be avoided in favor of investment in efficient network topologies. It makes no economic sense to require a CLEC that is entering the market with no or a few customers, typically spread over a wide geographic area, to replicate the switch-intensive architecture of the entrenched incumbent LEC. In the initial phase of competition, there simply is not enough traffic volume to justify that type of architecture.

The higher costs that AT&T would be forced to bear under Verizon's proposal would make many markets in Virginia (that would be marginally profitable under the AT&T interconnection proposal) uneconomic to serve. In that sense, the Verizon proposal to shift its costs to AT&T will be detrimental to competition in Virginia. Finally, there is no basis for any claim by Verizon that AT&T is attempting to improperly shift facility costs to Verizon. Under the AT&T proposal, AT&T will bear the full financial costs of its originating traffic. AT&T acknowledges that it is responsible for the costs to originate, transport and terminate its traffic. Accordingly, AT&T would provide all of the facilities for its originating traffic between the AT&T switch and the POI selected by AT&T, and pay Verizon (through reciprocal compensation) for any transport and switching functions provided by Verizon for the completion of AT&T's traffic from the POI to the end user. Thus, AT&T's interconnection proposal is entirely consistent

with the Act, the guidance of the FCC, the findings of courts and other state Commissions, and is equitable for both parties.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

ISSUE I.1.A

Can Verizon force AT&T to establish a Point of Interconnection at a particular end office, when AT&T traffic to that end office reaches a certain threshold traffic level?

AT&T's Position:

No. It is AT&T's' right to select the locations at which it interconnects with Verizon's network, and it should not be required to establish a point of interconnection for its traffic at a Verizon end office, when the traffic to that end office reaches an arbitrary threshold proposed by Verizon.

Proposed Remedy:

Sections 4.0 *et seq.* set forth the terms and conditions necessary to support AT&T's position on this issue.

Verizon's Position:

Verizon's proposal requires AT&T to establish a POI at a Verizon end office when the traffic to that end office exceeds a CCS busy hour equivalent of 1DS1 for a single month.

Relevant Authorities:

Act, §§ 251(c)(2)(A), 251(c)(2)(B).

C.F.R. 51.305(a)(2)(iii).

First Report and Order, *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 172, 176, 220, 1062 (*"Local Competition Order"*).

Order, *AT&T Communications of SouthWest Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with SouthWestern Bell Telephone Company, Pursuant to Section 252(b) of the Telecommunications Act of 1996, at 9 (March 14, 2001).*

Revised Order, *AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Southwestern Bell Pursuant to Section 252(b) of the Telecommunications Act of 1996*, PUC Docket No. 22315 at 3 (March 14, 2001).

Arbitration Panel Report, *AT&T Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 00-1188-TP-ARB at 8 (March 19, 2001).

Explanation of AT&T's Position, Including Discussion of Relevant Authority:

This issue is related to both Issue I.1 and to Issue III.1 (relating to transit service obligations), to the extent that Verizon seeks to unilaterally dictate AT&T's POIs. As explained in AT&T's discussion on both of these issues, any attempt by Verizon to dictate the location, manner or technology at which AT&T interconnects, is contrary to the provisions of the Act and FCC rulings, which provide that a point of interconnection is selected and established by the CLEC, not the ILEC.

Section 251(c)(2)(B) requires Verizon to provide interconnection at any technically feasible point. The FCC Rules implementing this obligation make it clear that trunk interconnection points for a tandem switch are technically feasible interconnection points.[39] The sole exception to technical feasibility is when there are specific network reliability concerns. [40] As noted in Issue III.1, if tandem exhaust were truly Verizon's concern, then in order to meet Verizon's obligation to impose reasonable conditions on interconnection, the proposal should, at a minimum, be more narrowly limited to those tandems that were actually experiencing network exhaust. But even that limitation would

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39 C.F.R. 51.305(a)(2)(iii).

not be enough. In order to pass legal muster, the proposal would also have to satisfy Verizon's § 251(c)(2)(D) non-discrimination obligations as well. Since Verizon's proposal does not suggest that it would also take its traffic off its tandem (or require inter-exchange customers' traffic to be taken off the tandem) once a particular threshold is met, the proposal is further suspect.[41]

The Verizon proposal also requires AT&T to incur unnecessary additional costs. Verizon should not force AT&T to establish trunks that are not needed to economically accommodate AT&T's traffic. Yet Verizon's proposal does exactly that, by forcing AT&T to expend resources in those situations where the level of AT&T traffic does not economically justify separate trunks to the Verizon end offices. In most instances, a level of AT&T traffic between a Verizon end office and the AT&T point of interconnection equivalent to one DS1 or 200,000 combined minutes of use for a single month, the threshold Verizon proposes, will not justify the costs of establishing trunks to the end office. Rather, AT&T proposes that it be permitted to follow its engineering practices

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40 *Local Competition Order*, ¶198.

41 The Commission in Oklahoma and an Arbitrators Panel in Ohio ordered AT&T to establish direct trunks at end offices after a certain threshold level of traffic was reached. The Orders did not explain, however, how those requirements did not violate the ILEC's obligation to provide interconnection at any technically feasible point on just reasonable and non-discriminatory terms and conditions. Order, *AT&T Communications of SouthWest Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with SouthWestern Bell Telephone Company, Pursuant to Section 252(b) of the Telecommunications Act of 1996, at 9 (March 14, 2001);* Arbitration Panel Report, *AT&T Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Case No. 00-1188-TP-ARB at 8 (March 19, 2001).

and route traffic directly to an end office when it becomes economically reasonable for AT&T to do so.[42]

Although Verizon's proposal may impose significant and unnecessary financial burdens on AT&T, AT&T's proposal fully compensates Verizon. The increased rates that AT&T pays when traffic is delivered at the tandem location are designed to compensate Verizon for its tandem costs and associated transport. Thus, based on these rates, Verizon will recover enough to build more tandems, if they are necessary. Indeed, if a tandem shortage truly existed, it would more likely be the result of Verizon's failure to provision adequate facilities for foreseeable levels of demand, rather than any shortage of compensation to make those network additions.

In summary, Verizon's proposal may burden AT&T with significant and unnecessary additional facilities costs. Rather than dictating network investment as Verizon's proposal does, AT&T's proposal compensates Verizon for its additional costs. If and when Verizon deems it profitable to make additional tandem investments, it will be free to do so, just as AT&T should be free to make its own network decisions. Verizon's proposal is nothing more than an anticompetitive tactic designed to require AT&T to incur unnecessary facility and administrative costs. Its proposal is contrary to law and public policy, and therefore should be rejected.

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42 AT&T has offered Verizon a compromise under which AT&T would agree to establish direct end office trunking to a Verizon end office when AT&T's originating traffic reaches an economic CCS threshold at a particular switch. (The economic CCS threshold is determined based on traffic volume, length of haul, facility costs or lease rates and avoided costs.) Since the parties have agreed to use one-way trunking, under AT&T's POI proposal Verizon would be given the reciprocal right to request direct end office trunking for its originating traffic at the point that Verizon believes that it is efficient to do so, without regard to AT&T's originating traffic. AT&T's offer was rejected by Verizon.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

ISSUE III.1 This issue is common to AT&T and WorldCom.

Tandem Transit Service

Does Verizon have an obligation to provide transit service to AT&T for the exchange of local traffic with other carriers, regardless of the level of traffic exchanged between AT&T and the other carriers?

Attorney: IV Mellups/Ellen Schmidt
Witness: Dave Talbott

AT&T's Position:

Yes. Verizon has a legal obligation to provide transit service to AT&T for the exchange of local traffic with other carriers, regardless of the level of traffic exchanged between AT&T and the other carriers.

Proposed Remedy:

Section 4.0 *et. seq.* of the attached proposed contract sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Verizon's Position:

Verizon claims its has no legal obligation to provide transit service. Thus, it proposes to provide tandem service on a voluntary basis. It proposes that AT&T direct connect with third party CLECs once traffic between AT&T and the CLEC reaches a DS1 level of traffic. If AT&T does not implement direct trunking with that carrier within a certain time frame after that traffic threshold is met, Verizon proposes to terminate the provision of tandem service to AT&T and that carrier. Verizon suggests that this action is necessary to avoid tandem congestion.

Relevant Authorities:

Act, §§ 251(c)(2)(A), 251(c)(2)(B), and 251(a)(1).

First Report and Order, *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 172, 176, 220, 1062 (*"Local Competition Order"*), ¶ 997.

47 C.F.R. § 51.305(a)(2)(iii).

Arbitration Panel Report, *AT&T Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 00-1188-TP-ARB at 84-85 (March 19, 2001).

Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 at 20 (Oct. 18, 2000) (The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000 at 8).

Order, *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*,Cause No. 40571-INT-03 at 21-22 (Nov. 20, 2000).

Revised Arbitration Award, *AT&T Communications of Texas, L.P. TCG Dallas, and Teleport Communications,, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Dkt. No. 22315 at 40 (Sept. 27, 2000).

Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Dkt. No. 00-01-022, at 472, 473 (CA PUC Aug. 3, 2000).

Explanation of AT&T's Position Including Discussion of Relevant Authority:

Verizon has an obligation to provide transit service pursuant to its interconnection obligations set forth in the Act.[43] AT&T, and not Verizon, has the right to decide whether it is preferable to direct connect with individual CLECs, ICOs, CMRS or wireless providers (collectively "CLECs") or to indirectly connect to the CLEC by purchasing tandem transit service from Verizon. Much of AT&T's transit traffic is destined for other ILECs in territories not served by AT&T. These ILECs have the same monopoly power in their territories as Verizon in its territory, and share incentives to demand unreasonable rates, terms, and conditions of interconnection. Under Verizon's proposal, AT&T would lose leverage *vis-à-vis* these ILECs, because AT&T would be compelled to reach agreement. Verizon's claim that transit service is a voluntary offering that it can refuse to provide by imposing either time or capacity restrictions is contrary to law.[44]

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43 Transit service provides transport of traffic between CLECs, ICOs, or wireless providers that are not directly interconnected with one other – via the ILEC tandem. On a tandem transit call neither the originating or terminating end user is a customer of the Verizon.

44 Several arbitrators have found that ILECs have an obligation to provide transit service to CLECs. *See, Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Dkt. No. 00-01-022, at 472, 473 (CA PUC Aug. 3, 2000); Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 at 20 (Oct. 18, 2000) (The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000 at 8); Arbitration Panel Report, *AT&T Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 00-1188-TP-ARB at 84-85 (March 19, 2001). *But see,* Order, *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*,Cause No. 40571-INT-03 at 21-22 (Nov. 20, 2000).

Section 251(c)(2)(A) of the Act requires Verizon to permit AT&T to interconnect with Verizon's network "for the transmission and routing of telephone exchange service and exchange access." The statute does *not* restrict this duty to interconnect only for traffic between Verizon and AT&T. The statute does not state "for the transmission and routing of telephone exchange service and exchange access traffic *between the ILEC and the requesting telecommunications carrier.*" In fact, there are neither traffic or time limitations in §251(c)(2)(A). Instead, the statutory language is broad and unrestricted on its face. Thus, Verizon's proposal is inconsistent with its § 251(c)(2)(A) obligations.

The imposition of a time or capacity restriction on transit traffic also violates Verizon's obligations to interconnect under the Act because it eviscerates AT&T's right, pursuant to § 251(a)(1), to interconnect indirectly with the facilities of other telecommunications carriers. Specifically, § 251(a)(1) requires CLECs, and other non-incumbent telecommunications carriers, to interconnect directly or indirectly with the facilities and equipment of other carriers. The FCC in the *Local Competition Order* ¶ 997 explained that this requirement granted LECs the right to determine, based on their economic and technical considerations, whether to connect directly or indirectly with other carriers. An indirect connection was described to be an interconnection via the incumbent LEC's network – which is precisely what transit service provides. Specifically, the FCC stated:

> Regarding the issue of interconnecting "directly or indirectly" with the facilities of other telecommunications carriers, we conclude that telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices. The interconnection obligations under section 251(a) differ from the obligations under 251(c). Unlike section 251(c), which applies to incumbent LECs, section 251(a) interconnection applies to all

> telecommunications carriers, including those with no market power. Given the lack of market power by telecommunications carriers required to provide interconnection via section 251(a), and the clear language of the statute, we find that indirect connection (e.g., two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a)." In addition, the FCC stated "...Section 251 is clear in imposing different obligations on carriers depending upon their classification (i.e., incumbent LEC, LEC or telecommunications carrier). For example, section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct connection, however, is not required under section 251(a) of all telecommunications carriers. ¶ 997.

Therefore, Verizon's proposed imposition of capacity or time restrictions on transit traffic must be rejected because such restrictions eliminate AT&T's ability to choose to interconnect indirectly with other CLECs - *a right specifically granted to it in Section 251(a)(1) of the Act.*

The imposition of a time or capacity restriction on transit service also violates Verizon's § 251(c)(2)(B) obligation to provide interconnection at any technically feasible point. The FCC rule implementing this section, Rule 51.305(a)(2)(iii), makes it clear that "trunk interconnection points for a tandem switch" are technically feasible points. Thus, as noted above, because Verizon has the obligation to permit AT&T to indirectly interconnect with it for the exchange of CLEC to CLEC traffic, such interconnection must also be allowed at any technically feasible point – which includes the tandem switch.[45]

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45 Verizon's vague references to tandem congestion are not enough to relieve Verizon of its interconnection obligations. Transit service at a particular tandem could be legitimately limited only if the interconnection at that tandem met the "network reliability" exception to technical feasibility set forth the *Local Competition Order*, ¶198. In order to support such an argument, however, Verizon would have to present specific factual evidence regarding the existence of a level of tandem congestion that, without its proposed limits on tandem traffic, would compromise its network reliability. Moreover, even if network

Finally, Verizon's proposal is also contrary to public policy and will have a harmful effect on competition in Virginia. Verizon controls the existing ubiquitous local network over which LECs must deliver almost all traffic that is bound from one LEC to another LEC. In these circumstances, Verizon, as a competitor of AT&T and also the owner of facilities essential to AT&T's ability to compete, is placing itself in the position of arbitrator to determine whether AT&T's interconnection arrangements with other parties are sufficient to justify delivery of traffic.[46] It is inefficient, and indeed anticompetitive, for Verizon to abuse its position as the provider of transit services for the industry (which it has solely by virtue of its local exchange monopoly) by forcing LECs that interconnect in this manner to enter into agreements they may neither want nor need.[47]

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reliability were truly Verizon's concern, its proposal would still have to meet its obligations to provide interconnection on just, reasonable and non-discriminatory terms pursuant to § 251(c)(2)(D). Verizon's current proposal is on its face deficient in that regard, since its proposed application of a uniform traffic limit for all tandems regardless of the level of congestion, does not specifically target tandems that are experiencing an exhaust situation; and thus it is unreasonable. It also is questionable whether Verizon's proposed solution is applied consistent with its nondiscrimination obligation under § 251(c)(2)(D).

46 AT&T recognizes that if two LECs exchange substantial volumes of transit traffic that it could be more efficient for those two LECs to interconnect directly. Thus, AT&T would not object to agreeing to enter into good faith negotiations for direct interconnection with other CLECs for which AT&T exchanges substantial volumes of traffic. However, if AT&T cannot negotiate acceptable terms, it cannot be forced to enter into an adverse business relationship, given its rights to engage in indirect interconnection.

47 Moreover, Verizon's position is at odds with the prevailing industry practice that has arisen over the past four years, where LECs that use the incumbent for transit services freely exchange traffic on a de facto "bill and keep" basis, particularly in light of the relatively low volumes that are exchanged in this manner.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.